

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	Case No. 8:13CR105
)	
Plaintiff,)	
)	
-vs-)	MOTION TO SUPPRESS EVIDENCE
)	OBTAINED THROUGH INTERCEPTION
)	OF ELECTRONIC COMMUNICATIONS
)	
TIMOTHY DEFOGGI,)	
Defendant.)	

COMES NOW Defendant, through counsel, and respectfully requests for an order suppressing any and all evidence obtained through the interception of electronic communications, as ordered on November 18th, 2012 for the following reason:

1. The Application failed to identify an official specially designated by the Attorney General of the United States who authorized the application.

18 U.S.C § 2518(1)(a) states that:

“Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant’s authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

The Application in the present case fails to identify the officer authorizing the application. Paragraph 2 alludes to a memorandum identifying an authorized official who approved the Application, but the memorandum was not attached. As such, the Application is fatally deficient upon its face.

WHEREFORE, defendant respectfully requests this Honorable Court suppress any and all evidence obtained through the interception of electronic communications pursuant to the November 18th, 2012 order.

Respectfully submitted,
Timothy Defoggi, Defendant

/s/ John S. Berry
John S. Berry, #22627
BERRY LAW FIRM
2650 North 48th Street
Lincoln, NE 68508
john@jsberrylaw.com
(402) 466-8444

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Michael Norris, Assistant U.S. Attorney and Keith A. Becker, U.S. Department of Justice, by electronically serving a copy of the same to both via CM/ECF, on this the 6th day of March, 2014.

/s/ John S. Berry
John S. Berry, #22627